

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

SANDY PHILLIPS, individually and as	:	
surviving parent of Jessica Ghawi, decedent;	:	
LONNIE PHILLIPS, individually and as	:	
surviving parent of Jessica Ghawi, decedent	:	
	:	
Plaintiffs	:	Civil Action No. 1:14-cv-02822-RPM
	:	
v.	:	
	:	
BRIAN PLATT, d/b/a BTP Arms, <i>et al.</i>	:	
	:	
Defendants	:	

**DEFENDANT PLATT’S AMENDED MOTION FOR ATTORNEYS’ FEES UNDER
RULE 54(d) AND D.C.COLO.LCivR 54.3**

The Defendant, Brian Platt d/b/a BTP Arms (“Platt”), through counsel, pursuant to Fed. R. Civ. P. 54(d) and D.C.COLO.LCivR 54.3 moves for an order granting him reasonable attorneys’ fees and costs for the reasons set forth below.

Certificate of Conferral Pursuant to D.C.COLO.L CIVR 7.1: Platt’s counsel has attempted to confer with Plaintiffs’ attorneys via telephone and email regarding the relief requested in this Motion. Platt’s counsel did briefly speak with Thomas Stoever, counsel for Plaintiffs, who stated he was “unavailable to confer” and “will not be in a position” to provide a response until Monday, April 13, 2015. Email communication was also received from Mr. Stoever confirming Plaintiffs intent to review the motion and discuss any issues with Platt’s counsel. Platt’s counsel also called and left a message for Kelly Sampson, out-of-state counsel for Plaintiffs, and called Jonathan Lowy but was unable to leave a message. At this time, Plaintiffs have not stated whether they are

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opposed or unopposed to this Motion. Platt presumes they would oppose the relief requested herein.

I. GROUNDS FOR RELIEF

Plaintiffs filed his action alleging that as a result of deaths and injuries arising from the Aurora Century 16 shootings, they were entitled to an injunctive relief that would regulate internet sales by the Defendants of firearms, ammunition and other equipment. Plaintiffs asserted that tort claims sounding in negligent entrustment, negligence and public nuisance entitled them to that relief.

Platt, along with other defendants, filed a motion to dismiss under Rule 12(b)(6). On March 27, 2015, after conducting a hearing on the pending motions, the Court granted the Rule 12(b)(6) motions of the defendants and entered judgment.

C.R.S. §13-17-201 provides in part:

In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12 (b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action....

When Colorado state law tort claims are dismissed under Fed. R. Civ. P. 12(b). Federal courts are to use §13-17-201 as a fee recovery provision. *Jones v. Denver Post Corp.*, 203 F.3d 748, 757 (10th Cir. 2000).

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The action brought by the Plaintiffs was clearly brought "as a result of a death or injury to person." Plaintiffs alleged that the death occurred as a result of torts committed by the Defendants. The statute therefore applies and entitles Platt to an award of attorneys' fees.

II. ATTORNEYS' FEES CLAIMED

In defending the action, two law firms provided Platt with legal services: (1) Sasscer, Clagett & Bucher, of Upper Marlboro, Maryland and (2) Messner Reeves LLP of Denver Colorado.

A. Services by Sasscer, Clagett & Bucher ("SCB")

Attached is the affidavit of Phillip R. Zuber, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at SCB providing legal services for Platt; a description of the services rendered; the amount of time spent; the hourly rate charged; and the total amount claimed. The total amount claimed for services and costs by SCB is \$23,714.99.

B. Services by Messner Reeves, LLP

Attached is the affidavit of Bruce A. Montoya, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at Messner, Reeves providing legal services for Platt; a description of the services rendered; the amount of time spent; the hourly rate charged; and the total amount

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claimed. The total amount claimed for services and costs by Messner Reeves is
\$9,854.90.

III. REQUEST FOR RELIEF

Having successfully defended on a Rule 12(b)(6) Motion the Plaintiffs' action
brought "as a result of the death" of a person and sounding in tort, Platt is entitled to an
award of attorneys' fees. Platt requests the entry of judgment against the Plaintiffs in
the amount of **\$33,569.89**.

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I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on this 10th day of April 2015.

Respectfully submitted,

/s/ Phillip R. Zuber (w/consent)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2015, I electronically filed the foregoing **Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filings to the following:

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